

1 THE HONORABLE JOHN C. COUGHENOUR  
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9 UNITED STATES DISTRICT COURT  
10 WESTERN DISTRICT OF WASHINGTON  
11 AT SEATTLE

12 P.W. ARMS, INC., a  
13 Washington corporation,

14 Plaintiff,

15 v.

16 UNITED STATES OF AMERICA and the  
17 BUREAU OF ALCOHOL, TOBACCO,  
18 FIREARMS AND EXPLOSIVES, a Federal  
19 Agency,

20 Defendants.

21 No. 2:15-cv-01990 JCC

22 **[PROPOSED] ORDER  
23 GRANTING PLAINTIFF P.W.  
24 ARMS, INC.'S MOTION TO  
25 SUPPLEMENT THE  
26 ADMINISTRATIVE RECORD  
27 AND STRIKE PORTIONS OF  
28 THE ADMINISTRATIVE  
RECORD**

29 This matter came before the Court on Plaintiff P.W. Arm's (PWA) Motion to Supplement  
30 the Administrative Record and Strike Portions of the Administrative Record, the Administrative  
31 Record being that record which the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)  
32 filed in response to PWA's claim under the Administrative Procedure Act (APA).

33 After having considered the motion, papers filed in opposition, the certified  
34 administrative record, and the pleadings on file, the Court hereby finds that ATF directly, or at  
35 least indirectly, relied on (1) the October 31, 1986 letter by ATF Deputy Director William Drake  
36 (the Drake letter) (Dkt. # 26-1, Exhibit 1), (2) the Declaration of William Majors, paragraph 22  
37 (the Drake letter) (Dkt. # 26-1, Exhibit 1), (2) the Declaration of William Majors, paragraph 22  
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39 [PROPOSED] ORDER GRANTING PWA'S MOTION TO SUPPLEMENT  
40 AND TO STRIKE CERTAIN PORTIONS OF THE ADMINISTRATIVE  
41 RECORD- 1

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1 only (Majors' Declaration) (Dkt. # 11 at ¶22), (3) the January 28, 2014 email of which the  
 2 subject line reads, "Importer Stacy Prineas (PW Arms)" (Administrative Record (AR) 113), (4)  
 3 the entire book from which two pages were excerpted (AR 45-46), and (5) ATF's April 7, 2014  
 4 email to E. Griffith (Dkt. # 26-1, Exhibit 2).

5 The Court further finds that both Majors' Declaration and the Drake letter are necessary  
 6 to determine whether ATF considered all relevant factors and explained its decision to classify  
 7 7N6 as 'armor piercing.'

8 The Court further finds that both Majors' Declaration and the Drake letter are necessary  
 9 to explain ATF's position regarding the term 'armor piercing ammunition,' the subject of PWA's  
 10 APA summary judgment motion.

11 The Court further finds that PWA documented that ATF's interpretation of 'armor  
 12 piercing ammunition' as stated in its cross-motion for summary judgment was inconsistent with  
 13 ATF's historical interpretation, as documented by the Drake letter, and inconsistent with ATF's  
 14 very recent interpretation, as documented by Majors' Declaration. *See* Dkt. # 26, pp. 4, 12-14,  
 15 16. The Court finds that this supports a showing of ATF's bad faith.

17 The Court further finds that both Majors' Declaration and the Drake letter provide  
 18 necessary background information on how ATF historically and currently interpreted 18 U.S.C.  
 19 § 921(a)(17)(B)(i). Following, the Court will consider these documents when deciding PWA's  
 20 pending APA summary judgment motion.

21 The Court further finds that a proper administrative record generally only includes  
 22 materials that were before ATF at the time its decision was made to classify 7N6 as 'armor  
 23 piercing,' which was on April 7, 2014. *See* AR 37. Following, this Court finds that ATF  
 24 improperly submitted as part of the Administrative Record documents regarding internet  
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1 research into “commercially available” handguns conducted by ATF after April 7, 2014 (*see* AR  
 2 51-59, 156-215) and ATF’s June 2, 2014 letter responding to PWA’s counsel, in which ATF  
 3 raised for the first time its position that only the “center and innermost foundation” constitute  
 4 7N6’s core (*see* AR 43-44).

5 The Court further finds that ATF’s document, created after April 7, 2014, documents  
 6 ATF’s position that “ATF does not consider there to be a difference between a partial and full  
 7 steel core.” AR 143. This is contrary to ATF’s position as stated in ATF’s cross-motion for  
 8 summary judgment (*see* Dkt. # 24) and is properly part of the Administrative Record because it  
 9 documents what ATF’s position was before and on April 7, 2014, when ATF classified 7N6 as  
 10 ‘armor piercing.’

11 THE COURT HEREBY ORDERS that ATF shall supplement the Administrative Record  
 12 with (1) the Drake letter (Dkt. # 26-1, Exhibit 1), (2) Majors’ Declaration (Dkt. # 11 at ¶22), (3)  
 13 a complete and legible copy of the January 28, 2014 email of which the subject line reads,  
 14 “Importer Stacy Prineas (PW Arms)” (*see* AR 113), (4) the entire book from which ATF  
 15 excerpted two pages (*see* AR 45-46), and (5) ATF’s April 7, 2014 email to E. Griffith (Dkt. # 26-  
 16 1, Exhibit 2).

17 Further, IT IS ORDERED that the following documents are struck from the  
 18 Administrative Record: AR 51-59, 156-215 -- documents regarding internet research into  
 19 “commercially available” handguns conducted by ATF after April 7, 2014, and AR 43-44 --  
 20 ATF’s June 2, 2014 letter responding to PWA’s counsel, in which ATF raised for the first time  
 21 its position that only the “center and innermost foundation” constitute 7N6’s core.

1 DATED this \_\_\_\_ day of \_\_\_\_\_, 2016.  
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Honorable John C. Coughenour  
UNITED STATES DISTRICT JUDGE

5 Presented by:  
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9 By s/ Patrick J. Preston

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